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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 DELPHINE ALLEN, and others,

12 Plaintiffs,

13 v.

14 CITY OF OAKLAND, and others,

15 Defendants.  
16

Case No. 00-cv-04599 TEH (NC)

**ORDER DENYING PROTECTIVE  
ORDER**

17 On September 24, 2012, approximately four hours into the deposition of Oakland  
18 Mayor Jean Quan, the parties jointly requested this Court to resolve a discovery dispute  
19 that arose during the deposition. The Court addressed the dispute over the telephone and  
20 issued an order on the record as documented by the Court reporter at the deposition. The  
21 Court did not have the benefit of a deposition transcript and relied on the representations of  
22 counsel as to the questions and objections that triggered the dispute.

23 The central question presented was whether Mayor Quan should be compelled to  
24 respond to certain questions about Oakland's internal investigation, response, and actions  
25 relating to a very recent dispute involving the City Administrator. This order summarizes  
26 the Court's reasoning.

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1 **1. Oakland's assertions in support of a protective order**

2 First, Oakland asserted that the questions were irrelevant and sought information that  
3 was not reasonably calculated to lead to the discovery of admissible evidence. Oakland's  
4 counsel characterized the questions as a "fishing expedition," and expressed that responses  
5 to these questions would not assist the Court in resolving the motion for the appointment of  
6 a receiver for the Oakland Police Department.

7 Second, Oakland asserted that the questions requested "confidential" information  
8 about internal Oakland government investigations and personnel decisions. The Mayor  
9 stated that responding to these questions made her "uncomfortable." Oakland did not  
10 identify any specific evidentiary privilege that was implicated by the deposition questions.

11 Oakland therefore sought a protective order precluding questions to Mayor Quan  
12 about the disputed topics.

13 **2. The Court's analysis and conclusion**

14 The Court denied Oakland's request for a protective order. First, the method and  
15 timing of the request disfavored a protective order. Plaintiffs had asked similar questions  
16 of previous deponents, including the City Administrator. Oakland did not object at those  
17 depositions, and agreed that any confidentiality concerns could be addressed through the  
18 protective orders already in place. *See* Dkt. Nos. 114, 144, 149, 215, 577. Second,  
19 instructions not to answer are generally not permissible under the Federal Rules of Civil  
20 Procedure absent a specifically asserted privilege. Fed. R. Civ. P. 30(c)(2) ("A person may  
21 instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a  
22 limitation ordered by the court, or to present a motion under Rule 30(d)(3)."). Here,  
23 objections based on relevance and "confidentiality" are not sufficient to instruct a witness  
24 not to answer. Third, Oakland's valid concerns about confidentiality are addressed through  
25 an existing protective order that limits the use of this type of information. Dkt. No. 577.  
26 Fourth, based on the Court's understanding of the recent dispute involving the City  
27 Administrator, the Court finds that the questions directed to Mayor Quan were relevant and  
28 reasonably calculated to lead to the discovery of admissible evidence. If the entire seven

1 hour deposition were devoted to these topics, then the questions would perhaps be  
2 burdensome and harassing. But as expressed to the Court, the plaintiffs had asked  
3 approximately four hours of questions on other topics. At bottom, a deponent—even a  
4 Mayor—does not get to choose the questions she wants to answer. For all these reasons,  
5 Oakland’s request for a mid-deposition protective order was denied.

6 The Court may revisit this Order after reviewing the Mayor’s deposition transcript,  
7 on any party’s motion. Any party may object to this Order within fourteen days under  
8 Federal Rule of Civil Procedure 72(a).

9 IT IS SO ORDERED.

10 Date: September 28, 2012

  
11 Nathanael M. Cousins  
12 United States Magistrate Judge  
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